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SUPREME COURT, U.S.

In The
Supreme Court of the United States

CHARLES A. PRATT CONSTRUCTION CO., INC.,

Petitioner,

v.

CALIFORNIA COASTAL COMMISSION,

Respondent.

On Petition For Writ Of Certiorari To The California Court Of Appeal, Second Appellate Dist., Div. 6

BRIEF FOR WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION AS *AMICUS CURIAE* SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. In *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978), the Court held that claims that government land regulation effect a regulatory taking in violation of the 5th Amendment must be decided *ad hoc* based on their individual facts.

   Question: Consistent with this constitutional baseline, can the California courts hold ***as a matter of law*** that regulations ***cannot*** be a taking even though they allow no more than 20% of a parcel (and likely far less than that) to be put to viable private use?

2. In *Williamson County Reg. Plan. Commn., v. Hamilton Bank*, 473 U.S. 172, 186 (1985), the Court held that a regulatory taking claim was not ripe for litigation until the regulator had reached a "final" determination of what use would be allowed on the property.

   Question: When (a) a property owner undergoes an eight year administrative process, including environmental evaluation of ten different ways to use the property, but (b) the regulatory agency rejects all alternatives, then (c) has there been sufficient basis for an evidentiary showing that no reasonable use will be allowed, in order to demonstrate "finality" for 5th Amendment ripeness purposes?

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus curiae Western Manufactured Housing Communities Association (WMA) is a nonprofit organization created in 1945 for the exclusive purpose of promoting and protecting the interests of owners, operators and developers of manufactured home communities in California.[1] The vast majority of WMA's member communities are family owned and operated businesses dedicated to providing quality housing to Californians. WMA's activities include representation before the California State Legislature, regulatory agencies and local elected officials. Through the Committee to Save Property Rights, WMA represents the industry in the courts by participating as *amicus curiae* in selected cases. *See*, *e.g.*, *Manufactured Home Communities, Inc. v. County of San Luis Obispo*, 84 Cal. Rptr. 3d 367, 370 (Cal. Ct. App. 2008) ("The Constitution protects everyone, the poor, the wealthy, the weak, the powerful, the guilty and the innocent. . . . Here we add to our list, mobile-home park owners."); *Galland v. City of Clovis*, 16 P.3d 130 (Cal. 2001) (substantive due process claim).

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[1] All counsel of record consented to the filing of this brief, and received notice of the intention to file this brief at least ten days before it was due. This brief was not authored in any part by counsel for either party, and no person or entity other than *amicus* made a monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The first Question presents "the next big thing" in regulatory takings law – how the *ad hoc Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978) standard is being applied by the lower courts.[2]

More than thirty years ago, this Court established a three-factor framework for analyzing most regulatory takings claims, and this standard has been recently reaffirmed as the "default" test. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538-39 (2005). *See also Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 326 n.23 (2002) (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 633 (2001) (O'Connor J., concurring) ("[O]ur polestar . . . remains the principles set forth in *Penn Central* itself," which require a "careful examination and weighing of all the relevant circumstances.")). These circumstances include consideration of "[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations," and the "character of the governmental action." *Penn Central*, 438 U.S. at 124 (cited in *Lingle*, 544 U.S. at 538-39).

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[2] *See* John D. Echeverria, *Making Sense of* Penn Central, 23 UCLA J. ENVTL. L. & POL'Y 171, 172 (2005) ("The next 'big thing'– perhaps the last big thing – in regulatory takings law will be resolving the meaning of the *Penn Central* factors.").

Because this framework eschews any "set formula" and relies instead on "essentially ad hoc, factual inquiries," it is, by its very nature, incapable of being subject to the rigid "20 percent is enough value" *per se* rule established by the California court. The decision below ignored the requirement of a "weighing of *all* the relevant circumstances," and established a bright-line rule focused solely on economic impact: when the government's denial of a development proposal leaves a property owner with no more than 20 percent (or as little as 1120 square feet) of her land available for development, the remaining two *Penn Central* factors become irrelevant. This arbitrary rule is apparently based on nothing more than caprice, since the court below offered no analysis or rationale in support. Lacking this Court's clarification, the default regulatory takings test has become a standardless exercise in judicial intuition, hidden behind a gloss of objectivity.

The second Question also presents a critical issue. The ripeness requirement of *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) has two parts. First, there must have been an indication by the government regarding what uses it will or will not allow. The "final decision" rule requires "the government entity charged with implementing the regulations [to have] reached a final decision regarding the application of the regulations to the property at issue." *Williamson County*, 473 U.S. at 186. This requirement was formulated to avoid having courts

decide *Penn Central* claims that a regulation has sufficiently impacted an owner's use of her property, when it remains uncertain what uses the government may allow. *See id.* at 191 (The *Penn Central* "factors simply cannot be evaluated until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations at issue to the particular land in question."). Second, *Williamson County* requires a property owner to seek – and be denied – compensation in state court, before coming to federal court and suffering dismissal under preclusion and full faith and credit principles. These two rules have proven to be tools for gamesmanship and illogical procedural traps instead of a way to insure regulatory takings claims are ready for judicial review.

The final decision rule cannot be applied to bar the courthouse door based solely on the government's assertion there may be *some* alternative under which development would be allowed. Denial of one viable application is enough.

This Court should review the decision of the California Court of Appeal.

ARGUMENT

I. SINCE THE *PENN CENTRAL* TEST IS HERE TO STAY, THE COURT SHOULD CLARIFY IT IS NOT SUBJECT TO BRIGHT-LINE RULES

According to the "storied but cryptic formulation" in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922), while property may be regulated to a certain extent, "'if regulation goes too far it will be recognized as a taking.'" *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005) (quoting *Mahon*, 260 U.S. at 415). In other words, government's power to enact regulations affecting private property operates on a continuum, and when it crosses an equitable boundary determined in most cases by reference to a multitude of case-specific facts, the label attached to the exercise of power becomes irrelevant, and what matters is the impact of the regulation on the owner. *See Mahon*, 260 U.S. at 413 (Kohler Act enacted pursuant to state's police power went "too far"); *Andrus v. Allard*, 444 U.S. 51, 64 & n.21 (1979) (federal power to protect endangered species measured against Takings Clause; "there is no abstract or fixed point at which judicial intervention under the Takings Clause becomes appropriate"); *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 316 (1987) ("While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such

formal proceedings."); *Lingle*, 544 U.S. at 537 (This Court "recognized that government regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation or ouster – and that such 'regulatory takings' may be compensable under the Fifth Amendment.").[3] If a regulation has the same effect as a seizure by an

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[3] As this Court recognized in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), a government action is not immune from judicial review simply because it is labeled an "economic" or "police power" regulation if it impacts property disproportionately:

> But simply denominating a governmental measure as a "business regulation" does not immunize it from constitutional challenge on the ground that it violates a provision of the Bill of Rights. . . . We see no reasons why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.

Id. at 392 (citing *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978); *Air Pollution Variance Bd. of Colorado v. W. Alfalfa Corp.*, 416 U.S. 861 (1974); *New York v. Burger*, 482 U.S. 691 (1987); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980)). Similar analysis is applied to other limitations on government power that protect fundamental rights, and these limitations do not depend on the power the government claims to be exercising. For example, a police power regulation is reviewed with strict scrutiny if it is alleged to impact free speech rights, even if it does not appear to be affirmative government censorship. *See, e.g., Boos v. Barry*, 485 U.S. 312 (1988) (invalidating law restricting placement of signs within 500 feet of embassy because it was not narrowly tailored).

affirmative exercise of eminent domain, the government has the choice to either back off the regulation, or, if it desires to continue to regulate, pay just compensation. *First English*, 482 U.S. at 316 (Fifth Amendment requires both invalidation and just compensation remedies); *Kaiser Aetna v. United States*, 444 U.S. 164, 172 (1979) (imposition of a navigational servitude pursuant to the federal commerce power would be an invalid taking). "The rub, of course, has been – and remains – how to discern how far is 'too far.'" *Lingle*, 544 U.S. at 538 (citing *Andrus*, 444 U.S. at 65; *Mahon*, 260 U.S. at 413).

In some cases, it is easy. This Court has established two categories of regulatory actions that generally will be deemed *per se* takings. First, "where government requires an owner to suffer a permanent physical invasion of her property – however minor – it must provide just compensation." *Lingle*, 544 U.S. at 538 (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (law requiring property owners to allow installation of a small cable box on buildings was a taking); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) (agency required landowner to dedicate public easement as a condition of development approvals). Second, a taking occurs when a regulation completely deprives an owner of "'all economically beneficial us[e]' of her property." *Lingle*, 544 U.S. at 538 (quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992)) (emphasis omitted).

In the remainder of cases, the rules are not as easily applied. Regulatory takings challenges outside of the two "relatively narrow" classes of physical invasions and economic wipeouts are analyzed by the three-part *Penn Central* standard. In that case, this Court "acknowledged that it had hitherto been unable to develop any set formula for evaluating regulatory takings claims, but identified several factors that have particular significance." *Penn Central*, 438 U.S. at 124. Those factors include: (1) the "economic impact" of the government action or regulation; (2) how this action "interferes with distinct investment-backed expectations;" and (3) the "character" of the regulation or government action. *Id.* (citing *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 594 (1962)). The *Penn Central* inquiry is inherently fact-based, and "depends largely upon the particular circumstances [in that] case." *Id.* These considerations, "though each has given rise to vexing subsidiary questions – have served as the principal guidelines for resolving regulatory takings claims that do not fall within the physical takings or *Lucas* rules." *Lingle*, 544 U.S. at 539 (citing *Palazzolo v. Rhode Island*, 533 U.S. 606, 617-18, 632-34 (2001) (O'Connor, J., concurring)). Questions of economic viability and diminution of use and value are factual inquiries. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 720-21 (1999) ("[W]e hold that the issue whether a landowner has been deprived of all economically viable use of his property is a predominantly factual question . . . [a] question is for the jury.").

The "20 percent is enough value" rule established by the court below transforms the economic impact factor into a legal issue and the only relevant consideration, despite this Court's recent caution that no *Penn Central* factor is entitled to conclusive weight. *Lingle*, 544 U.S. at 539. The California court provided no rationale for this bright-line rule:

> Pratt claims that 80 percent of his tract is designated ESHA [Environmentally Sensitive Habitat Area] and that no development is possible in an ESHA. Assuming Pratt's claim is true, that leaves 20 percent of the 121-acre tract, over 24 acres, available for development.

Charles A. Pratt Constr. Co., Inc. v. California Coastal Comm'n, 76 Cal. Rptr. 3d 466, 475 (Cal. Ct. App. 2008).

Yet, the decision below – while inexplicable – is not surprising, given the difficulty the lower courts, property owners, and governments have understanding the *Penn Central* theory and applying the economic impact factor. For example, the court in *Noghrey v. Town of Brookhaven*, 852 N.Y.S. 2d 220 (N.Y. App. Div. 2008) reversed a jury's federal regulatory takings verdict. The plaintiff purchased parcels zoned for shopping plazas with the intention of building one. The town adopted a moratorium to study the zoning on the parcels and eventually rezoned them for residential uses. The property owner brought regulatory takings claims under the Fifth Amendment and state law. The jury determined the property

owner had not established a total regulatory taking pursuant to *Lucas* but found that the owner had established a partial regulatory taking under the *Penn Central* test. *Noghrey*, 852 N.Y.S. 2d at 221. The trial court instructed the jury on the three factors:

> With respect to the first [*Penn Central*] factor; that is, the economic impact of the regulation, [the property owner] claims that the values of his properties were reduced substantially. You may consider the values of the properties immediately before and immediately after the rezoning, and whether or not this reduction in value was a substantial reduction relative to the value before the properties were rezoned. [The property owner] must prove by a preponderance of the evidence that the rezoning deprived him of any use permitted by the residential zoning classification and this resulted in . . . a near total or substantial decrease or significant reduction in value.

Id. (emphasis omitted). The appellate court held this jury instruction did not properly convey the *Penn Central* standard regarding economic impact, even though it did. Citing *Lucas* for the proposition that a 95 percent diminution of value would not result in a *per se* taking because it was "one step short of complete," the court of appeals conflated the *per se Lucas* rule (which requires an economic wipeout) with *Penn Central*'s economic impact factor which does not contain any "set formula" for when a diminution of value will

result in a taking, when considered along with the other two factors. *Id.*

Thus, while a "substantial" or "significant" diminution of value will not necessarily result in a *Lucas per se* taking, this only means a trial is necessary to determine whether – in light of the other *Penn Central* factors – a less-than-total reduction in value is a taking because the "[g]overnment [is] forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

Instead, like the California court in the case at bar, *Noghrey* established a bright-line rule that even "substantial" and "significant" economic impacts are insufficient as a matter of law, regardless of the property owner's distinct investment-backed expectations or the character of the government action. *See Noghrey*, 852 N.Y.S. 2d at 222 ("The terms 'substantial' and 'significant' were insufficient to convey the extent of diminution necessary to support a taking."). The court held that for even a partial *Penn Central* taking, the economic impact must be "one step short of complete," and that the proper test is whether the regulation left only a "bare residue" of value. *See id.* at 222-23 (On remand, the court "should instruct the jury that the proper inquiry is whether the regulation left only a 'bare residue' of value, or use similar language which would properly convey to the jury the high threshold of loss necessary to support a partial regulatory taking.") (citing *de St. Aubin v.*

Flacke, 505 N.Y.S. 2d 859 (N.Y. 1986); *Brace v. United States*, 72 Fed. Cl. 337 (2006); *Pompa Constr. Corp. v. City of Saratoga Springs*, 706 F.2d 418 (2d Cir. 1983); *Friedenburg v. New York State Dep't of Envtl. Conservation*, 767 N.Y.S. 2d 451 (N.Y. App. Div. 2003)).[4]

The lower courts' confusion is not limited to cases where liability is denied. In *Mann v. Georgia Dep't of Corr.*, 653 S.E.2d 740 (Ga. 2007), the Georgia Supreme Court invalidated under the Takings Clause a statute which prohibited registered sex offenders from residing within 1,000 feet of a child care facility. Mann, an offender, was living legally in a home he owned when a child care facility relocated to within 1,000 feet of him. The Department of Corrections ordered Mann to leave upon pain of arrest. The court noted the effect of the Georgia statute was not simply to interfere with Mann's property rights, but to dispossess him of his home. The court held "the effect of [the statute] is to mandate appellant's immediate physical removal from his Hibiscus Court residence.

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[4] *See also Frall Developers, Inc. v. Bd. of County Comm'rs of Frederick County*, 2008 U.S. Dist. LEXIS 78912, at *45-*46 (D. Md. Sep. 30, 2008) (only analyzing case under the *per se* rules, and not applying *Penn Central* factors, concluding no taking occurred because plaintiff was not deprived of all value); *Sands North, Inc. v. City of Anchorage*, 537 F. Supp. 2d 1032, 1041 (D. Alaska 2007) (dismissing case because "Plaintiff's bare assertion that 'the regulation interferes with Plaintiff's investment-based expectations' is inadequate to survive a motion for judgment on the pleadings").

It is 'functionally equivalent to the classic taking in which government directly . . . ousts the owner from his domain.'" *Id.* at 744 (citing *Lingle*, 544 U.S. at 539). Despite the physical invasion – the statute in effect invited *anyone but Mann* to occupy his house, and had the effect of evicting him – the court applied the *ad hoc Penn Central* test instead of the *Loretto per se* standard because of the court's misunderstanding that *Penn Central* governed all other takings not within the *Lucas* wipeout rule. *Mann*, 653 S.E.2d at 742-44.

Penn Central's factors have also been the subject of academic criticism and a call for clarification:

> If the *Penn Central* test is to serve as more than legal decoration for judicial rulings based on intuition, it is imperative to clarify the meaning of *Penn Central*.

John D. Echeverria, *Making Sense of* Penn Central, 23 UCLA J. ENVTL. L. & POL'Y 171, 174-75 (2005). "Intuition," not the rule of law, appears to be what guided the court below to come up with its arbitrary 20 percent rule. Since *Penn Central* indeed appears to be "here to stay," *id.*, the petition in the case at bar presents the opportunity to clarify that "set formulas" such as those imposed by the California court in this case and the New York court in *Noghrey*, are not permitted under *Penn Central*.

II. DENIAL OF A DETAILED DEVELOPMENT PROPOSAL IS FINAL ENOUGH

Can more be said about the ripeness rules established by *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) that has not been already said? In *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323 (2005) four Justices of this Court wrote separately to note their belief the exhaustion requirement of *Williamson County* should be revisited:

> Finally, *Williamson County*'s state-litigation rule has created some real anomalies, justifying our revisiting the issue. . . . I joined the opinion of the Court in *Williamson County*. But further reflection and experience lead me to think that the justifications for its state-litigation requirement are suspect, while its impact on takings plaintiffs is dramatic. . . . In an appropriate case, I believe the Court should reconsider whether plaintiffs asserting a Fifth Amendment takings claim based on the final decision of a state or local government entity must first seek compensation in state courts.

Id. at 351 (Rehnquist, C.J., concurring). This term, two petitions have called for the case to be reconsidered. *See* Petition For a Writ of Certiorari, *Braun v. Ann Arbor Charter Twp.*, No. 08-250 (Aug. 25, 2008) (*cert. denied* Dec. 1, 2008); Petition For a Writ of Certiorari, *Agripost, LLC v. Miami-Dade County, Florida*, No. 08-567 (Oct. 27, 2008). There is no reason to expect this trend to diminish because in the

more than 20 years since *Williamson County*, the ripeness rules have been employed to create a byzantine procedural maze, and have transformed the process for vindicating federal constitutional rights into a pleadings game designed to bleed out property owners (who do not pay their attorneys on salary, as municipal governments do) and avoid addressing the merits of takings and other constitutional claims.[5] After more than 80 years of the modern regulatory takings doctrine, the law might be expected to have progressed beyond the issue of whether a complaint states a claim for relief.

For the latest example of the procedural roundabout *Williamson County* has wrought, see *West Linn Corporate Park, L.L.C. v. City of West Linn*, 534 F.3d 1091 (9th Cir. 2008), a case in which the Ninth Circuit, after removal of a regulatory takings claim from state court and trial in federal court, referred the takings issues in the case to the Oregon Supreme Court. Like a good plaintiff is required to do under *Williamson County*, the property owner began its odyssey in state court. It claimed, among other things, that exactions the city imposed on the

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[5] Even though *Williamson County* was based on the text of the Takings Clause, *see Williamson County*, 473 U.S. at 194 ("[T]he Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation[.]"), some courts apply the doctrine to due process and equal protection claims. *See, e.g., Gamble v. Eau Claire County*, 5 F.3d 285, 286-88 (7th Cir. 1993) (substantive due process); *Forseth v. Vill. of Sussex*, 199 F.3d 363, 369 (9th Cir. 2000) (equal protection).

approval of its development proposals took its property in violation of the United States and Oregon constitutions, and that the city retaliated against it for asserting its constitutional rights.

Despite *Williamson County*'s ripeness requirements, however, the city removed the case to federal court on the basis of federal question jurisdiction. The district court did not question removal because this Court has not yet recognized the asymmetry in the fact that a landowner cannot *institute* a federal takings claim in federal court because there purportedly is no ripe federal question, but the government is free to *remove* a federal takings claim to federal court. *See, e.g., City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 163 (1997) (city removed regulatory takings case to federal court, and neither district court, court of appeals, nor this Court raised *Williamson County* ripeness). After trial in which the district court held partially in favor of the property owner on its inverse condemnation claims and its claims for municipal retaliation, the Ninth Circuit punted the federal takings claims back to state court and certified three questions to the Oregon Supreme Court, where the case now sits. Thus, litigation which was commenced in 2001 in the Oregon courts as *Williamson County* requires, is now – after a federal trial and appeal – back in state court awaiting a determination whether the complaint is valid. *See also Snaza v. City of Saint Paul*, 2008 WL 5085109, at *3 (8th Cir. Dec. 4, 2008) (property owner commenced regulatory takings

claims in state court, and city removed to federal court where it successfully asserted the claims were not ripe). *But see Del-Prairie Stock Farm, Inc. v. County of Walworth*, 572 F. Supp. 2d 1031 (E.D. Wis. 2008) (remanding removed case to state court); *Yamagiwa v. City of Half Moon Bay*, 523 F. Supp. 2d 1036, 1110 (N.D. Cal. 2007) (refusing to remand a case removed by the government because "the City having invoked federal jurisdiction, its effort to multiply these proceedings by a remand to state court smacks of bad faith"). In *Yamagiwa*, not only did the city remove the case to federal court, it had the audacity to ask the court after a weeks-long trial which it lost, to dismiss the case since it only could have been brought by the plaintiff in state court – *which it had been*. Such are the arguments *Williamson County* not only allows, but positively encourages.

The final decision rule was not intended to require a search for some metaphysical future time when the government finally admits its decision about the possible uses of the plaintiff's property is utterly and absolutely unchangeable. *See, e.g., MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 350 n.7 (1986) ("[A] property owner is of course not required to resort to piecemeal litigation or otherwise unfair procedures in order to obtain [a final] determination[.]") (citing *Williamson County*, 473 U.S. at 205-06 (Stevens, J., concurring)); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 920 F.2d 1496, 1507 (9th Cir. 1990) (reversing trial court's dismissal of claim because city's position was final

enough to make the case ripe for review). Instead, the rule should take into account the reality of the land use planning and entitlement process where development applications are not blindly submitted by property owners, reviewed by government planners, and then either accepted or rejected outright. The land use entitlement process is neither cheap, nor easy. Consequently, property owners most often work with government officials before, during, and after a development application is submitted to tailor the proposal to insure that any government concerns are answered, and to maximize the chances the landowners' desires are met.

Where, as in the case at bar, a property owner submits a detailed development proposal, consults with the government for years, proposes multiple alternatives for development, and the government responds that denial of the application is the "*only* appropriate course," then its denials are final enough for a court to evaluate, and final enough to allow the landowner to get past "Go" and present its case.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully requests the Court grant the Petition for a Writ of Certiorari.

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Respectfully submitted,

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